

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JONATHAN MICHAEL ALEXANDER,

Petitioner,

v.

Nos.: 3:06-cr-134
3:12-cv-09
(VARLAN/SHIRLEY)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM

This is a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 filed by petitioner Jonathan Michael Alexander ("petitioner"). Petitioner pleaded guilty to being a felon in possession of a firearm. Because of his four prior North Carolina convictions for breaking and entering, petitioner was sentenced as an armed career criminal to a term of imprisonment of 180 months. He now moves to vacate his conviction based upon his actual innocence and contends that none of his prior North Carolina convictions qualified as a felony under federal law.

The government concedes that, pursuant to *United States v. Rodriguez*, 553 U.S. 377 (2008), and *United States v. Pruitt*, 545 F.3d 416 (6th Cir. 2008), none of petitioner's prior North Carolina convictions were punishable by more than one year of imprisonment and thus petitioner was erroneously convicted of being a felon in possession of a firearm. The government affirmatively waives any defense based upon the statute of limitation and urges the Court to grant petitioner relief.

Accordingly, the motion to vacate, set aside or correct sentence will be **GRANTED**. Petitioner's conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), will be **SET ASIDE** and **VACATED**, and his indictment will be **DISMISSED WITH PREJUDICE**. Petitioner should be released from custody forthwith. All other pending motions will be **DENIED** as **MOOT**.

AN APPROPRIATE ORDER WILL ENTER.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE